

Application No. 09/975,588

RXSD 1019-1

**REMARKS**

In the Final Official Action mailed 24 January 2006, the Examiner reviewed claims 1-41. The Examiner has rejected claims 18-21 and 37-41 under 35 U.S.C. §112, second paragraph; has rejected claims 1, 2, 8, 17, 27, 28, 35 and 36 under 35 U.S.C §102(a); has rejected claims 3-6, 18-20, 29-34 and 37-41 under 35 U.S.C. §103(a); and has rejected claims 7, 9-16 and 21-26 under 35 U.S.C. §103(a).

Applicant requests amendment of claims 1, 9, 17-22, 27 and 36-41. Upon entry of the amendment, claims 1-41 remain pending.

**Examiner Interview**

Examiner Lee was interviewed by the undersigned attorney on 7 March 2006. In the interview, claim 1 was discussed. The Examiner explained her position that the broadest reasonable interpretation of the claim reads on the downloading of text instructions for a user to follow in order to mute a sound source, as shown in hearingrx.com. Applicant disagrees with this reading of the claims. Nonetheless, Applicant submits the present proposed amendments for consideration by the Examiner, and to address the Examiner's reading of the claims.

**Rejection of claims 18-21 and 37-41 under 35 U.S.C §112, Second Paragraph**

Claims 18-21 and 37-41 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite due to an issue with clear antecedent basis. Applicant proposes amendments to such claims to correct the mistake.

Accordingly, entry of the amendment, and reconsideration of the rejections of claims 18-21 and 37-41 are respectfully requested.

**Rejection of Claims 1, 2, 8, 17, 27, 28, 35 and 36 under 35 U.S.C. §102(a)**

Claims 1, 2, 8, 17, 27, 28, 35 and 36 are rejected under 35 U.S.C. §102(a) as being anticipated by hearingrx.com. Applicant proposes a clarifying amendment to independent claims 1, 17, 27 and 36, based on the Examiner Interview mentioned above, without change in scope of the claims.

In particular, although the claims as filed distinguish over the references, the clarifying amendment emphasizes that the limitation "execution of the computer program muting ..." does not read on presentation of text instructions to a user on a web page, as shown in the

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hearingrx.com reference, where the user is expected to intervene by following the text instructions to mute a sound source. This amendment is supported by the specification as filed, at paragraph [0010] for example. In fact, a problem solved by the invention as described in the application is the unreliability of user intervention as shown in the prior art for these functions. This amendment could not have been presented earlier, because the Examiner's interpretation of the claims was not understood.

Claims 2, 8, 28 and 35 depend from claims 1, 27 and 36, and are patentable for at least the same reasons.

Accordingly, reconsideration of the rejections of claims 1, 2, 8, 17, 27, 28, 35 and 36 as amended is respectfully requested.

Rejection of Claims 3-6, 18-20, 29-34 and 37-41 under 35 U.S.C. §103(a)

Claims 3-6, 18-20, 29-34 and 37-41 are rejected under 35 U.S.C. §103(a) as being unpatentable over a hearing test program from hearingrx.com. Claims 3-6, 18-20, 29-34 and 37-41 depend from corresponding ones of the amended independent claims 1, 17, 27 and 36, and are patentable for at least the same reasons.

Accordingly, reconsideration of the rejection of claims 3-6, 18-20, 29-34 and 37-41 is respectfully requested.

Rejection of Claims 7, 9-16 and 21-26 under 35 U.S.C. §103(a)

Claims 7, 9-16 and 21-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over a hearing test program from hearingrx.com in view of didyouhearme.com and Barmore (US 6,016,352). Applicant proposes a clarifying amendment to independent claims 9 and 22, based on the Examiner Interview mentioned above, without change in scope of the claims.

In particular, although the claims as filed distinguish over the references, the clarifying amendment emphasizes that the limitation "execution of the computer program muting ..." does not read on presentation of text instructions to a user on a web page, as shown in the hearingrx.com reference, where the user is expected to intervene by following the text instructions to mute a sound source. This amendment could not have been presented earlier, because the Examiner's interpretation of the claims was not understood.

Claim 7 depends from claim 1 as amended, and is patentable for at least the same reasons.

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Claims 10-16 depend from claim 9, and are patentable for at least the same reasons.

Claim 21 depends from claim 17 as amended, and is patentable for at least the same reasons.

Claims 23-26 depend from claim 22, and are patentable for at least the same reasons.

Accordingly, entry of the amendments and reconsideration of the rejection of claims 7, 9-16 and 21-26 as amended are respectfully requested.

### CONCLUSION

It is respectfully submitted that this application is now in condition for allowance.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (RXSD 1019-1).

Respectfully submitted,

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